

Remarks

This is a complete response to the Office Action mailed March 26, 2007. The amendments and accompanying remarks do not include new matter, and are solely clarifying in nature and not made for reason of patentability in response to a rejection over a cited reference. Absent the requested reconsideration, the remarks further serve to explain why this case is not presently in condition for appeal.

Support for the amendments to claims 1, 16, and 29 can be found at least in the specification in paragraphs [0021-0022], [0028], and [0044] of the published application for this case.

Rejection Under Section 102

Claims 1-2, 16, and 29-33 stand rejected as being anticipated by US 20040059876 (Nanda '876).

Claims 1 and 16

The Examiner's rationale for the rejection is that Nanda '876 anticipates reconstructing said sparse directory structure into a fully populated directory structure because it discloses evicting an entry from a fixed-size directory to make room for another entry in the directory.¹

Applicant reiterates that the Examiner's construction of the disputed claim phrase is an unreasonable interpretation for the reasons set forth in its previous response.² Nonetheless, Applicant has amended claims 1 and 16 without prejudice solely in order to more particularly point out and distinguish the claimed subject matter over the art of record.

¹ Office Action of 3/26/2007 pg. 3, citing Nanda '876 para. [0032] lines 11-12

² Applicant's Response of 12/22/2006, ppg. 10-12.

Particularly, the clarifying amendments explicitly recite the structural differences between the claimed directory structures and the directory structure of Nanda '876. That is, the *sparse directory* of the claimed embodiments has an entry for each addressable data stored in the container but not an entry for each addressable storage location in the container. The *fully populated directory* has an entry for each addressable data storage location in the container.

During examination claims are given their "broadest reasonable interpretation consistent with the specification."³ The "broadest reasonable interpretation" is the meaning that the skilled artisan would give to the claim term in view of the associated usage provided in the specification.⁴ A construction that is inconsistent with the written description would not be arrived at by the skilled artisan, and is therefore not a "reasonable interpretation."⁵

Claims 1 and 16 as originally filed explicitly recited reconstructing a directory from one structure to a different structure, from the *sparse directory structure* to the *fully populated directory structure*. The skilled artisan readily recognizes that the Examiner's construction reads the two claimed directory structures on the one directory structure in Nanda '876 that is described in two different states, that of being partially full and being full. Furthermore, the skilled artisan readily understands from reading the specification that both the *sparse directory structure* and the *fully populated directory structure* have an entry for each addressable data stored in the container. However, the directory disclosed in Nanda '876 is neither intended to nor inherently capable of retaining an entry for each

³Phillips v. AWH Corp., 75 USPQ2d 1321 (Fed. Cir. 2005)(en Banc); MPEP 2111.

⁴In re American Academy of Science Technical Center, 70 USPQ2d 1827 (Fed. Cir. 2004); In re Cortright, 49 USPQ2d 1463, 1468 (Fed. Cir. 1999); In re Morris, 44 USPQ2d 1023 (Fed. Cir. 1997)

⁵Phillips, supra; In re Morris, supra; In re Zletz, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)

addressable data stored in the container; instead, when the directory in Nanda '876 becomes full it evicts entries.⁶ Furthermore, the skilled artisan readily understands from reading the specification that the *fully populated directory structure* has an entry for each addressable data storage location in the container. However, the directory disclosed in Nanda '876 is neither intended to nor inherently capable of retaining an entry for each addressable storage location in the container; instead, the directory in Nanda '876 is a fixed-size directory for referencing only a subset of the information stored in the container.⁷

Therefore, the skilled artisan would find the Examiner's construction of the disputed claim language to be entirely inconsistent with its usage in the specification, and thereby not within the broadest reasonable interpretation consistent with the specification.

Reconsideration and withdrawal of the rejection of claims 1 and 16 and the claims depending therefrom in view of Applicant's clarifying amendments are respectfully requested. Absent the requested reconsideration, this case is not in condition for appeal because the Examiner has failed to substantiate a case of anticipation within the bounds of a reasonable construction of the claim language.

Claim 29

For the same reasons set forth above, the Examiner has not substantiated anticipation because there is no evidence in the record that Nanda '876 discloses *selectively constructing either a variable size sparse directory structure for a data container or a fixed size fully populated directory structure for the same data container* as originally recited by claim 29.

⁶ See, for example, Nanda '876 paras. [0019] and [0032].

⁷ See, for example, Nanda '876 paras. [0005] and [0032].

Additionally, the Examiner has not substantiated any evidence that Nanda '876 discloses the *variable size sparse directory* of the claimed embodiments. In fact, the skilled artisan readily recognizes that the directory structure in Nanda '876 is of a fixed size.⁸

Nonetheless, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 29 and the claims depending therefrom in view of the clarifying amendments.

Rejection Under Section 103

Claims 3-5, 7-9, 17-19, 21-23, and 25-28 stand rejected as being unpatentable over Nanda '876 in view of Abrashkevich '120. Applicant respectfully traverses this rejection because Abrashkevich '120 does not cure the deficiencies of Nanda '876 discussed above, and because these claims depend from an allowable independent claim, for reasons above, and provide additional limitations thereto. Reconsideration and withdrawal of the present rejection are respectfully requested.

Conclusion

This is a complete response to the Office Action mailed March 26, 2007. Applicant respectfully requests passage of all pending claims to issuance.

Applicant has also submitted herewith another request for telephone interview, the previous ones not having been granted. Absent the requested reconsideration, the interview is necessary in the absence of the requested reconsideration in order to address the unresolved issues making this case presently not in condition for appeal.

⁸ See, for example, Nanda '876 paras. [0005-0006], [0019], and [0032].

The Examiner is invited to contact the Attorneys listed below should any questions arise concerning this response or request for interview.

Respectfully submitted,

By: 

Mitchell K. McCarthy, Registration No. 38,794
McCarthy & Associates
500 West Main Street, Suite 609
Oklahoma City, Oklahoma 73102
Telephone: (405) 601-2798
Facsimile: (405) 601-2853